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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/036,573	12/31/2001	Robert L. Popp	KCC 4770 (K.C. NO. 17,310	4042

321 7590 09/15/2003

SENNIGER POWERS LEAVITT AND ROEDEL  
ONE METROPOLITAN SQUARE  
16TH FLOOR  
ST LOUIS, MO 63102

EXAMINER

REICHLE, KARIN M

ART UNIT	PAPER NUMBER
3761	11

DATE MAILED: 09/15/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/036,573	POPP ET AL.
	Examiner Karin M. Reichle	Art Unit 3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 08 August 2003.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-21 is/are pending in the application.

4a) Of the above claim(s) 2,4,5,8,11,14,16-18,20 and 21 is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1,3,6,7,9,10,12,13,15 and 19 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 31 December 2001 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:

- Certified copies of the priority documents have been received.
- Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
- Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

1) Notice of References Cited (PTO-892) 4) Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.

2) Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) Notice of Informal Patent Application (PTO-152)

3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4, 5, 6-9 6) Other: \_\_\_\_\_

DETAILED ACTION

*Election/Restrictions*

1. Applicant's election without traverse of the Group I claims, the species of inelastic material, the species of force application without substantial necking or gathering and the species of machine direction orientation in Paper No. 6 is acknowledged.
2. Claims 2, 4-5, 8, 11, 14, 16-18 and 20-21 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention and species, there being no allowable generic or linking claim. Election was made without traverse in Paper No. 6.

Claim 18 was also withdrawn since such requires the cross machine direction, a species which was not elected.

*Specification*

*Drawings*

3. The drawings are objected to because in Figure 2, upper left hand corner, there should be a line from 66 to the structure it denotes. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

4. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the invention as claimed in claims 1, 3, 6-7, 9-10, 12-13, 15 and 19, e.g. oriented loop material, inelastic material, bonding to retain

characteristics, must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

*Description*

5. The abstract of the disclosure is objected to because the abstract is too short, i.e. should be between 50 and 150 words in length. The legal terminology “comprises” should be avoided. On line 1, “infant diapers” should be --an infant diaper--. Correction is required. See MPEP § 608.01(b).

6. The disclosure is objected to because of the following informalities: in Figure 3, what is 78?

Appropriate correction is required.

*Claim Objections*

7. Claims 12-13, 15 and 19 are objected to because of the following informalities: in claims 12 and 15, line 3, “the”(first) should be --a--. Appropriate correction is required.

*Claim Rejections - 35 USC § 112*

8. Claims 1, 3, 6-7 and 9-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In regard to claims 1 and 6, it is unclear whether Applicant is claiming the subcombination of a mechanical fastening system, i.e. the claim preamble, or a combination of the mechanical system and an article, i.e. the claim body, e.g., “disposed on... article”. In regard to claims 3 and 10, a positive structural antecedent basis for “the machine direction” should be set forth, i.e. there are at least four machine directions, e.g., that of the web, that of the loop material, that of the fastening system and that of the article, which is it?

***Claim Rejections - 35 USC § 102/103***

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later

invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

11. Claims 1, 3, 6-7, 9-10, 12-13, 15 and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by or, in the alternative, under 35 USC 103(a) as obvious over Procter & Gamble, EP '198.

Claim 1: See Figures 1-3, 10, col. 3, lines 4-15, col. 5, lines 45-53, col. 6, lines 2-6, and 14-39, col. 8, lines 14-15, col. 9, lines 10-14 and lines 21-42, col. 13, lines 25-30, col. 14, lines 30-36 and col. 15, lines 29-41, i.e. the mechanical fastening system is 50 and has a first fastening component 20 of oriented nonwoven loop material 30 which nonwoven material can be a web, and a second fastening component 52 of hook material. The fastening components are refastenable. This claim recites a product by process, i.e. "and produced...force", on lines 4-7. The patentability of such claim is based on the product itself not the method of production. Therefore if the end product in the product by process claim is the same as or obvious from a product of the prior art, the claim does not distinguish over the prior art even though the prior product was made by a different process. See MPEP 2113. In this case the end product is a mechanical fastening system in which the nonwoven loop material fibers are oriented in a first direction without substantial necking or gathering of the web in a direction perpendicular to the first direction. Such an end product is the same as or obvious from the product of '198, see cited portions supra. Claims 3-4 and 10-11: As discussed supra, the claim is unclear as to "the machine direction" of what. See, also, col. 15, lines 29-41. Therefore since the '198 device can be positioned in any direction of the article, which includes a machine direction, e.g., of the article, the '198 device is considered to meet the language of the claims. Claims 6-7 and 13: see

discussion of claim 1 and col. 12, last line-col. 13, line 3. Claim 9: see col. 8, lines 30-31. Claim 12: see discussion of claim 1 and col. 14, line 50-col. 15, line 4. Claims 15, 19: see discussion of claim 12. With regard to lines 12-15, it is noted that it is not set forth how the component is extensible, e.g. in what direction? Therefore since the loop material as seen in Figures 1-3 and 10 which show the component before and after bonding to a layer of the body both have the same extension and retraction characteristics in the Z-direction, i.e. the direction of the height of the tunnels 36, the '198 device is considered to meet this claim limitation.

12. Claims 1, 3, 6-7, 9-10, 12-13, 15 and 19 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Procter & Gamble PCT '893.

Claim 1: See Figures 1-8, page 4, lines 12 et seq, page 6, lines 4-7, page 7, lines 9-10, 13-15 and 21-23, page 8, lines 1-17, page 12, line 9, page 13, lines 1-3, page 15, lines 13-15 and 23 et seq, i.e. the mechanical fastening system is 20 and has a first fastening component 22 of oriented nonwoven loop material 30 which nonwoven material can be a web, and a second fastening component 24 of hook material 28. The fastening components are refastenable. This claim recites a product by process, i.e. "and produced...force", on lines 4-7. The patentability of such claim is based on the product itself not the method of production. Therefore if the end product in the product by process claim is the same as or obvious from a product of the prior art, the claim does not distinguish over the prior art even though the prior product was made by a different process. See MPEP 2113. In this case the end product is a mechanical fastening system in which the nonwoven loop material fibers are oriented in a first direction without substantial necking or gathering of the web in a direction perpendicular to the first direction.

Such an end product is the same as or obvious from the product of '893, see cited portions supra.

Claims 3-4 and 10-11: As discussed infra, the claim is unclear as to "the machine direction" of what. See, also, page 8, lines 1-7, page 15, lines 23 et seq, and page 19, lines 9-15. Therefore since the '893 device can include filaments 36 positioned in any direction, which includes a machine direction, e.g., of the web or loop material or fastening component, the '893 device is considered to meet the language of the claims. Claims 6-7, and 13: see discussion of claim 1 and page 10, lines 7-10 and page 26, lines 24-26, i.e. the second lamina 80 is inelastic and if attached to composite 90 when it is completely relaxed, the composite 90 is inelastic. Claim 9: see page 13, lines 1-2. Claim 12: see discussion of claim 1 and page 18, lines 28-33. Claim 15, 19: see discussion of claim 12. With regard to lines 12-15, it is noted that it is not set forth how the component is extensible, e.g. in what direction? Therefore since the loop material as seen in Figures 1-6 which show the component before and after bonding to a layer of the body both have the same extension and retraction characteristics in the Z-direction, i.e. the direction of the height of the loops, the '893 is considered to meet the claim limitation.

### *Conclusion*

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. In the Sabee reference see col. 4, line 22-col. 5, line 13. The Weber et al and Bridges references were incorporated by references cited by applicant. The Leak et al, and thereby Morman '992, as well as the Kline et al and Schmitz references cited by applicant also teach various aspects of the invention.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karin M. Reichle whose telephone number is (703) 308-2617. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Weilun Lo can be reached on (703) 308-1957. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.

*K.M. Reichle*  
Karin M. Reichle  
Primary Examiner  
Art Unit 3761

KMR